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UNCLAS COLOMBO 001026

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DEPT FOR EB/IFD/OIA/JPROSELI AND L/CID/JNICOL

SENSITIVE

E.O. 12958: N/A

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SUBJECT: 2005 REPORT ON INVESTMENT DISPUTES AND
EXPROPRIATION CLAIMS

REF: SECSTATE 70014

1. The following dispute is being submitted for 2005 as per section 527 of the Foreign Relations Authorization Act (FRAA) for Sri Lanka:

(A) Claimant A

(B) 2004

(C) Claimant had been contracted in June 2000 to provide power to the national grid under a combined cycle agreement signed with the Ceylon Electricity Board (CEB), which retains the monopoly on power transmission and, together with its subsidiary, Lanka Electricity Company, has the monopoly on power distribution in the country. Under the Power Purchase Agreement (PPA) the CEB was required to establish two Letters of Credit (LC) with an aggregate value of \$20 million.

In March 2004, due to a fire that had shut down the claimant's power plant, and at the request of the Government of Sri Lanka (GSL), a standstill agreement was signed between claimant, CEB and the Ministry of Finance (MOF) to operate the plant in open cycle mode. In May 2004 the agreement was rendered invalid as the CEB did not make full payment for energy generated under the terms of the open cycle agreement. As a result US\$3million was still owed to the claimant.

Claimant met with CEB, Secretary to the Treasury and Secretary to the Ministry of Power & Energy to discuss the

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outstanding payment. GSL officials requested a renegotiation and as a result, claimant offered a reduction of US\$600,000 out of the total US\$3 million outstanding. The Claimant received a new agreement from the Attorney General's Department through the CEB, which reflected the new payment terms. The Claimant accepted this new agreement. Nonetheless, despite Cabinet approval and CEB Board approval, the Chairman of the CEB has refused to make the required payment of US\$2.4 million. Establishment of Letters of Credit (LC), as per the original PPA, has also not been implemented to date.

Post has made representations on this matter to the Secretary to the Ministry of Finance, Minister of Power &

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Energy and the Presidential Adviser on Economic Affairs. These officials have assured Post that the matter is being looked into and claimant will be remunerated for the outstanding payment. However, no payment has been made nor LC established thus far. Claimant provided most recent update on this issue on May 17, 2005.

2. Claimant A: AES

LUNSTEAD